

STEVEN L. BESHEAR  
GOVERNOR



RICHARD D. VANCE  
SECRETARY

COMMONWEALTH OF KENTUCKY  
**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

MINE SAFETY REVIEW COMMISSION  
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COMMISSIONERS  
DENISE MOORE DAVIDSON,  
CHAIR  
WILLIAM D. DONAN  
STAN CAVE

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF **MARCH 13, 2008**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSCR" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, Commissioner William D. Donan and Commissioner Stan Cave were present. Also in attendance was the MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 p.m. EST
- ❑ **Declaration of a Quorum:** Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Counsel for the Kentucky Department of Natural Resources, Office of Legal Services was present representing the Office of Mine Safety and Licensing. General Counsel DNR Mike Haines, his assistant Kari Sutherland, and staff attorneys for OLS were present as counsel for OMSL.
- ❑ The **minutes** for the meeting on **02/14/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

## **Motions - various;**

- A motion was made by Hon. Marco Rajkovich and OMSL attorney Hon. Haines for the approval of a settlement for Banks and Smith in **05-MSRC-010 Banks, Smith & Horn**. Both Banks and Smith appeared in person. The Commission determined that the **Settlement Agreement** for each as tendered was an acceptable resolution and **approved**. Commissioner Cave so moved, which was seconded by Commissioner Donan. The motion carried unanimously, and was so Ordered. The Commission directed the General Counsel to prepare a Show Cause Order for Horn.
- **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
  - 07-MSRC-051 was called in regard to **Joshua James Ison** upon OMSL's motion to permanently revoke his certifications for failure to comply with the Settlement Agreement. OMSL was represented by Hon. Haines. OMSL presented proof that he failed to complete counseling required by the settlement agreement adopted as a final order of MSRC. He did not appear or participate and was therefore unable to demonstrate compliance with that term of the Settlement Agreement. Commissioner Donan made a motion to **grant** the motion to **permanently revoke**, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
  - **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
    - The Commission discussed the procedurally similar KRS 351.120(12) appeals of : 07-MSRC-243 Jared **Stanley**; 08-MSRC-037 Earl **Adkins**, Jr; 08-MSRC-049 Joseph E. **Carroll**; 08-MSRC-056 Tommy C. **Adcox**; 08-MSRC-062 Timothy Wayne **Combs**; 08-MSRC-067 Travis **White** when called. They either appeared or phoned prior to the hearing and moved for **continuances** to Friday **April 18**. Commissioner Donan so moved as to each. These were seconded by Commissioner Cave. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.
    - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 07-MSRC-150 Brian Joe **Morris**; 07-MSRC-225 Jeremy W. **Crain**; 07-MSRC-228 Larry D. **Bard**; 08-MSRC-038 Randolph **Hardin**; 08-MSRC-048 Jason D. **Lawson**; 08-MSRC-055 Vealor M. **Brown**; 08-MSRC-063 Richard M. **Green**; 08-MSRC-064 Timothy A. **Reed**; and 08-

MSRC-068 Danny **Patrick** in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson recused herself from the discussion and determinations on Lawson citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders except for the recusals which were signed by Commissioner Donan.

- The Commission called also the KRS 351.120(12) Petition for Appeal of 08-MSRC-057 Chad **Cupps**, who was duly notified and scheduled for the hearing *he* requested for this meeting. He did **not appear** and was Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Donan signed the Order, because Davidson recused citing a conflict.
- The Commission also considered 07-MSRC-228 Larry D. **Bard**; 08-MSRC-036 David B. **Kingrea**; and 08-MSRC-046 Sherrell **Sandlin**. Each failed to appear despite notice at the last meeting and failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:**

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-010 Cory J. **Leason**; 08-MSRC-013 Robert Jacob **Mullins**; 08-MSRC-015 Charles W. **Vitaoe**; 08-MSRC-020 Dustin Allen **Easley**; 08-MSRC-023 Jason A. **Worley**; 08-MSRC-024 Walter R. **Young**; 08-MSRC-030 Timothy L **Sammons**; 08-MSRC-050 Steve **Collins**; 08-MSRC-051 Burnis V. **Bentley**; 08-MSRC-052 Barry D. **Boyd**; 08-MSRC-053 Bradley W. **Kanes**; 08-MSRC-059 Henry R. **Jude**; Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearing for revocation: 08-MSRC-032

Jason B. **Pauley**; Commissioner Donan made a motion to **grant** his settlement which was seconded as appropriate. The motion carried unanimously, and were so Ordered. Chair Davidson signed the Order.

- The Commission granted **continuances** in the following: 07-MSRC-154 Michael **Anderson**; 08-MSRC-054 Michael R. **Lewis**; 08-MSRC-060 Dana N. **Howard** and 08-MSRC-061 Joseph **Holtzclaw** all of which were continued to April 18, 2008.

**The 11:00 a.m. Docket for “initial denial” pursuant to KRS 351.184(5) for failure of the pre-certification alcohol and substance abuse testing:**

*None were set for this meeting, continued to April 18 previously.*

**The 11:00 a.m. Docket for Motions to Reconsider:**

- Counsel Hon. Roper in 06-MSRC-042 **Ralf Hurley** moved for a **continuance** due to the development of previously undiscovered evidence. OMSL did not oppose the motion to allow time for its review. Commissioner Donan made a motion to **grant** the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **Johnny Halcomb** 07-MSRC-241 appeared and was allowed to have his reconsideration **continued** to June 12 so as to allow time for counseling and drug tests necessary to support his motion. Commissioner Donan made a motion to **grant** the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **Christopher Brown** in 06-MSRC-056 appeared and was allowed to move to enter an **Amended Settlement Agreement** with increased testing protocol and other enhancements to the Settlement. Commissioner Donan made a motion to **grant** the motion, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

**The 11:00 a.m. Docket for “traditional” type cases:**

- Upon the call of 07-MSRC-126 **Cam Mining, Inc.** OMSL Counsel Hon. Haines informed the Commission that Respondent in the case had indicated that a continuance was needed because of the unavailability of an essential witness. Upon that, the Commission determined that the cases should be **continued** to the August 14, meeting to allow time for settlement. After consideration MSRC determined that this motion should be **granted**.

Commissioner Donan so moved, Cave gave the second and Davidson signed the Order.

- Upon the call of 07-MSRC-085 **Compton, Hurley & Layne** the parties indicated that a Settlement Agreement as to each was negotiated. The terms of the **settlements** were put into the record. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Cave gave the second.

#### **Petitions for an Order filed by OMSL in roof control cases:**

OMSL submitted a Petition for an Order in the roof control violation penalty type case 08-MSRC-058 **Wilcoal Mining, Inc.**, which was not opposed by the Respondent. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Cave gave the second and Davidson signed the Order.

#### **Old Business**

- ❑ **Ratification of Final Order:** *None filed for this meeting.*
- ❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Friday **April 18**, and the likelihood of one traditional type hearing.

- ❑ **Status Report & Abeyances;**

None were scheduled for this meeting.

- ❑ **Appeals**

- ❑ The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a briefing schedule. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie "Tick" Sizemore**, et al. Hon. Haines, counsel for OMSL stated briefing was underway.

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a briefing schedule.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The General Counsel Certified the record and sent the file to the Court.

## **New Business**

### **❑ Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains to forty three (43) cents per mile.
- ❑ The JAVS computerized court reporting system received routine maintenance and updates.
- ❑ The ceiling leak in the hearing room was repaired.

### **❑ Training**

- **Required Hearing Officer Training:** Wednesday June 25 2008. Initial training – Hon. Stan Cave only- March 28 ½ day. The required KYOAG annual training hearing officer for all MSRC Commissioners and the General counsel has been scheduled for **June 25, 2008**.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Probable Cause Determinations and then reconvened to issue orders below as appropriate.

### **❑ Probable Cause Determinations**

The following case was discussed and then the Commission determined that Probable Cause was appropriate: 08-MSRC-077 **Phillip D. Ray**. Commissioner Donan so moved, Cave gave the second and Davidson signed the Order.


### **❑ Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Friday April 18, 2008.**
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Cave. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Friday April 18, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

  
Chair Denise Moore Davidson  
Mine Safety Review Commission

4/18/08  
Date